



February 15, 2017

Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Securities Exchange Act Release No. 78713 (August 29, 2016); SR-Nasdaq 2016-120

Dear Mr. Fields:

Investors Exchange LLC (“IEX”) is writing a second time with respect to a proposal by Nasdaq Stock Market LLC (“Nasdaq”) to impose new charges for connectivity at its data center to third party data, including UTP data.¹ In response to comments from the industry and other exchanges, including IEX, Nasdaq recently amended its filing (the “Revised Proposal”).² We do not agree with Nasdaq that these changes “completely negate the concerns voiced by commenters.”³ In particular, we believe that the approval of the Revised Proposal would create a bad precedent, in two respects.

First, Nasdaq has responded to concerns that imposing new charges for connectivity to third party data would unnecessarily add costs to the delivery of UTP data by offering a waiver of the new fee for one connection per user who receives only UTP data through that connection. But Nasdaq continues to reserve the right to impose a new fee in the future or eliminate the waiver (by use of an immediately effective filing) without consultation with or approval by the UTP Operating Committee (“Committee”), on the grounds that (i) other Committee members have not previously asserted the right to approve this type of action; and (ii) the UTP Plan in describing the authority to approve fees does not specifically mention “connectivity” fees.

On the first point, we assume the issue has not come up before because Nasdaq has not previously tried to take unilateral action that increases the cost of UTP data.

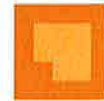
On the second point, we think that Nasdaq is splitting hairs semantically in trying to support an unsupportable position. The systems for disseminating consolidated data were intended to form “the heart of the national market system.”⁴ Accordingly, the

¹ See Securities Exchange Act Release No. 78713 (August 29, 2016), 81 FR 60768 (September 2, 2016).

² See letter from T. Sean Bennett, Principal Associate General Counsel, Nasdaq, to Brent J. Fields, Secretary, SEC, dated January 31, 2017 (“Second Amendment”).

³ Letter from T. Sean Bennett, Principal Associate General Counsel, Nasdaq, to Brent J. Fields, Secretary, SEC, dated January 26, 2017.

⁴ H.R. Rep. No. 94-229, 94th Cong., 1st Sess. 93 (1975).



Commission has stressed the importance of preserving “the integrity and affordability of the consolidated data stream.”⁵ The Committee oversees the administration of the UTP Plan, which exists to ensure that data is collected, consolidated, and disseminated “in a manner consistent with the Exchange Act.”⁶ The dissemination and affordability of UTP data depends to a meaningful degree on what it costs to receive it at the place where it is generated. Further, the UTP Plan expressly requires Committee approval for new fees or increases to existing fees relating to UTP data.⁷ It is hard to imagine an issue that is more central to the purpose for the Committee’s existence than this one.

In general, the effort by Nasdaq and other exchanges to defend connectivity fee increases by distinguishing them from higher market data fees involves a distinction without a difference. From a user’s standpoint, it is irrelevant whether its monthly invoice shows a new fee for connectivity or a higher market data charge.

Our second main concern is that Nasdaq proposes to offer users a “choice” of obtaining the new connection under a 1Gb or 10Gb option, but any party choosing the less expensive option would need to sign an attestation that it is aware Nasdaq thinks that 1Gb is insufficient and that Nasdaq is not responsible for any resulting harm.⁸ If Nasdaq is going to prescribe a particular means of receiving data, it should be able to justify it objectively. Nasdaq argues that both the new connectivity requirement and the use of a 10Gb connection are justified by capacity and risk management concerns. Various commenters have vigorously challenged those justifications. We do not believe that Nasdaq has made the case for requiring separate connectivity and requiring users consuming SIP data to choose the highest bandwidth option. But in any event, allowing an exchange to coerce users to pay for a more expensive product in this way would create a very troubling precedent by handing a new tool to exchanges in the ongoing campaign to impose ever higher fees for the right to trade.

Sincerely,

John Ramsay
Chief Market Policy Officer

⁵ Securities Exchange Act Release No. 51808 (June 9, 2005). 70 FR 37496, 37503 (June 29, 2005).

⁶ Section II. of the *Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis*, Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007).

⁷ Section IV.B.3 of the UTP Plan.

⁸ See Second Amendment at 8, fn. 15.